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FISCAL IMPACT STATEMENT

LS 6491
BILL NUMBER: HB 1083

NOTE PREPARED: Apr 20, 2011
BILL AMENDED: Apr 20, 2011

SUBJECT: Criminal Law.

FIRST AUTHOR: Rep. Crouch
FIRST SPONSOR: Sen. Mishler

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Defenses to the Crimes of Disseminating Matter* – It provides defenses to the crimes of disseminating matter that is harmful to minors, child exploitation, and possession of child pornography if a cellular telephone was used and the defendant and recipient of the matter are certain ages and meet other requirements.
- B. *School Corporation Issues* – It provides that a school corporation may offer classes, instruction, or programs regarding the risks and consequences of creating and sharing sexually suggestive or explicit materials. It provides that discipline rules adopted by a school corporation must prohibit bullying through the use of computers, computer systems, or computer networks of a school corporation. It provides a defense to child exploitation and possession of child pornography if the acts constituting the offense were performed by a school employee in the course of the person's employment.
- C. *Criminal Penalty Changes* – It makes theft: (1) a Class A misdemeanor if the amount of property involved in the theft is less than \$750; (2) a Class D felony if the amount is between \$750 and \$50,000 or if the person has a prior conviction; and (3) a Class C felony if the amount of property is at least \$50,000. It removes provisions relating to receiving stolen property. It makes forgery a Class D felony. It consolidates certain duplicative provisions and makes enhancements to certain crimes more uniform.
- D. *Criminal Code Evaluation Commission* – It requires the Criminal Code Evaluation Commission to study certain sex crimes against children during the 2011 interim.

Effective Date: July 1, 2011.

Explanation of State Expenditures: (Revised) *Defenses to the Crimes of Disseminating Matter* – There are no data to indicate how many fewer offenders may be convicted of possession of child pornography, a Class D felony, as a result of a defense to the crime being available. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances.

Criminal Code Evaluation Commission – The Criminal Law Study Committee has 14 members, consisting of 8 legislators, 1 lay member, 4 state employees, and 1 circuit or superior court judge. The committee operates under the policies governing study committees adopted by the Legislative Council. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of \$9,500 per interim for committees with fewer than 16 members. The Criminal Law Study Committee should be able to add this study to their plan of work within the likely committee budget.

(Revised) *Crimes of Theft* – Several categories of theft are restructured. The Department of Correction (DOC) estimates these changes could save an estimated 580 new beds from having to be added to DOC facilities. Under the general category of theft, the following changes are proposed.

Proposed Changes in Economic Loss in Theft		
	Current Law	Proposed
Class A Misdemeanor	none	\$750 or less
Class D felony	\$100,000 or less	between \$750 and \$50,000
Class C felony	\$100,000 or more	\$50,000 or more

DOC estimates that 20% of all felony thefts will be for less than \$750, reducing beds needed by 218 per year.

Both auto theft and forgery are Class C felonies and would be made Class D felonies.

For forgery, DOC estimates that 319 beds will be saved with this change since 891 Class C felons would be released 262 days sooner if they were Class D felons.

For auto theft, DOC anticipates 44 fewer beds needed, as 99 Class C felons would serve 324 days less if they were sentenced as Class D felons.

Proposed changes to insurance fraud, check deception, welfare fraud, Medicaid fraud, insurance fraud, bank fraud, and check fraud offenses will affect certain thresholds of economic loss so that more offenders would be sentenced as D rather than C felons. LSA anticipates that any savings in beds are expected to be minimal. In CY 2009, about 45 offenders were committed to DOC for all of these offenses combined.

The average expenditure to house an adult offender was \$19,307 in FY 2010. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$68,260 in FY 2010. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: (Revised) *Defenses to the Crimes of Disseminating Matter* – If fewer court

cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would decrease. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would not be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: (Revised) *Defenses to the Crimes of Disseminating Matter* – If fewer defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may decrease. The average cost per day is approximately \$44.

(Revised) *School Corporation Issues* – Under current law the dissemination or possession of child pornography is a felony. However, if the material disseminated was for legitimate scientific or educational purposes or if the defendant had reasonable cause to believe that the minor involved was above the legal age limit, the defendant may employ these facts as a legitimate defense.

This provision adds to the list of legitimate defenses that a defendant may use if charged with disseminating what could be considered child pornographic material under current law. It stipulates that if the defendant used a cellular phone to disseminate an image, is less than 22 years of age and within 4 years of the recipient's age, is in an ongoing dating relationship with the recipient, and the recipient implicitly or explicitly acquiesced in the defendant's conduct, the defendant may use these facts as a legitimate defense. However, the bill negates this defense if the defendant transmitted the image to a third party who is not depicted in the image.

This provision, in effect, permits the transmission of sexual materials between young adult or teenage couples as long as the individuals are in a relationship with each other, the images are of themselves, and both parties consent to the transmission. The fiscal impact of this provision would depend on local action. There are instances where, under current law, a prosecutor might have brought such a case to trial but under this provision would be reluctant to do so.

(Revised) *Prohibition of Bullying*: Under current law, a school corporation must establish written discipline rules prohibiting bullying on school grounds, at school functions, or through the use of property or equipment provided by the school. This bill directs school corporations to establish rules prohibiting bullying through the use of data or computer software that can be accessed through a computer network of the school corporation.

The bill also authorizes school corporations to offer classes on the potential risks and consequences of creating and sharing sexually suggestive or explicit materials through cellular telephones, social networking web sites, computer networks, and other digital media.

The fiscal impact of this provision would depend on local action. A school corporation that decides to offer these classes would probably have to do so within its existing budget.

Explanation of Local Revenues: (Revised) *Defenses to the Crimes of Disseminating Matter* – If fewer court actions occur and a guilty verdict is not entered, local governments would not receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Legislative Services Agency; Criminal Justice Institute; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: IC 2-5.5-5

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